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Book Reviews

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BOOK REVIEWS

EDWARD H. WARREN, *Margin Customers*, The Plimpton Press, Norwood, Massachusetts, (1941) pp. i-xi, 1-464, \$4.00.

Professor Warren of the Harvard Law School takes up the question of what is the fundamental relation between a margin customer and a stock broker in the event a stock broker re-pledges the security deposited with him. In other words, may there be a conversion of the pledgor margin customer's interest? If the stock broker makes way with the security of the margin customer, what is the nature of the pledgor's claim? Is the claim *in rem* or *ex contractu*?

The author takes the position that Judge Cardozo, when on the New York Court of Appeals, laid the foundation for undermining the remedy of *trover* in the famous case of *Wood v. Fisk*.*

Professor Warren rightfully contends, in the opinion of the reviewer, that the margin customer should have both remedies of *trover* and breach of contract. In a very entertaining manner, replete with pithy comments and entertaining sarcasm, Professor Warren traces the early history of the law of pledge, the possible effects of Judge Cardozo's decision, and states what, in his opinion, should be the law governing the broken relationship of pledgor and pledgee. The reason for Warren insisting upon property protection seemingly lies in the concern for enabling the pledgor to protect himself against rascals profiting by their rascality and engendering greater care in important business transactions.

To tie into Judge Cardozo, now deceased, and hold him responsible ideologically for the modern day consequences of his decision in 1915 is similar to holding one accountable for past deeds when new circumstances have arisen. At rock bottom, the issue between Warren and Cardozo is whether the broken pledgor-pledgee relationship is one of property or contract. In other words, when is a relationship so? To the reviewer, anything is so only when it is actually so and is not so merely because thought so. A matter may be thought so when it is not so. Otherwise, there would be no reason for the existence of the thought. The reason for the conception of property conversion is the inadequacy of contractual protection. The reason for giving contractual protection to a broken property relationship is the absence of any property protection. Why Professor Warren should insist upon an option of remedy and a waiver if election is made, and at the same time, insist so strongly upon the recognition of protection of the relation as a property right is not logically clear. However, a disagreement in opinion between the reviewer and Professor Warren is not greatly material to the importance of the work which Professor Warren has done. The cases are exhausted in

* 215 N. Y. 233, 109 N. E. 177 (1915).

chapter 9 and 10 and if the reviewer had been writing the book, this case material would have constituted the major portion of the book for it is clearly the most important.

Professor Warren performs incidental meritorious service in making it clear, although he is not the first one, that a demand and refusal are only pertinent when there has been a tortious withholding. Tortious transfers, tortious takings, tortious alterations, and many other cases of conversion do not require a demand for the return of the converted property and the refusal thereof.

ORBA F. TRAYLOR